

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAVELLE MOORE, JR. and U.S. POSTAL SERVICE,
POST OFFICE, El Dorado, AR

*Docket No. 00-18; Submitted on the Record;
Issued October 13, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's April 2, 1999 request for a hearing before an Office hearing representative; and if so, (2) whether the Office properly denied appellant's July 27, 1999 request for reconsideration.

In a decision dated October 16, 1995, the Office denied appellant's claim for compensation on the grounds that fact of injury was not established. The Office found that there was insufficient or conflicting evidence regarding whether the claimed events, incidents or exposures occurred at the times, places and in the manners alleged. The Office also found that the evidence failed to support a medical condition resulting from the alleged work incidents or exposures.¹

In a letter postmarked April 2, 1999, appellant requested a hearing before an Office hearing representative.

In a decision dated June 21, 1999, the Office found that appellant was not entitled to a hearing as a matter of right because his request for a hearing was untimely. Exercising its discretion, the Office denied appellant's request "for the reason that the issue in this case can equally well be addressed by requesting reconsideration from the district office and submitting evidence not previously considered which establishes that you sustained an injury as alleged."

In an undated letter received by the Office on July 27, 1999, appellant requested reconsideration. He submitted copies of documents in the record, medical reports that did not

¹ Because appellant filed his September 8, 1999 appeal to the Board more than one year after the Office's October 16, 1995 decision, the Board has no jurisdiction to review that decision. 20 C.F.R. § 501.3(d) (time for filing); *see id.* § 501.10(d)(2) (computation of time).

attribute his condition to federal employment, and an employing establishment accident report dated July 12, 1995, which provided a description of the alleged injury.

In a decision dated August 26, 1999, the Office denied a merit review of appellant's claim on the grounds that his request for reconsideration was untimely and failed to present clear evidence of error in the Office's October 16, 1995 decision.

The Board finds that the Office properly denied appellant's April 2, 1999 request for a hearing before an Office hearing representative.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides:

"Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."²

The hearing request must be sent within 30 days as determined by the postmark (or other carrier's date marking) of the date of the decision for which a hearing is sought.³ The Office has discretion to grant or deny a request that is made after the 30-day period specified in section 8124(b)(1) of the Act.⁴ In such cases, the Office will determine whether to grant a discretionary hearing, and if it denies a hearing the Office will so advise the claimant with reasons.⁵

Because appellant made his April 2, 1999 request for a hearing more than 30 days after the Office's October 16, 1995 decision, he is not entitled to a hearing as a matter of right under the Act.⁶ The Office exercised its discretion in the matter and determined not to grant a discretionary hearing "for the reason that the issue in this case can equally well be addressed by requesting reconsideration from the district office and submitting evidence not previously considered which establishes that you sustained an injury as alleged." The Board finds no abuse of discretion and will affirm the Office's June 21, 1999 decision denying a hearing.

The Board also finds that the Office properly denied appellant's July 27, 1999 request for reconsideration.

Section 10.607 of the Code of Federal Regulations provides that an application for reconsideration must be sent within one year of the date of the Office decision for which review is sought. The Office will consider an untimely application only if the application demonstrates

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.616(a).

⁴ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁵ *Rudolph Bermann*, 26 ECAB 354 (1975).

⁶ Appellant's representative asserted that appellant requested an oral hearing in November 1995, but the record contains no evidence to support this assertion.

clear evidence of error on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.⁷

Because appellant did not make his request for reconsideration within one year of the Office's October 16, 1995 decision, the Office will not review the merits of his claim without clear evidence of error in that decision. The evidence that appellant submitted to support his untimely request does not establish on its face that the Office's October 16, 1995 decision was erroneous. The description of injury appearing on the accident report is relevant and tends to support that the claimed events, incidents or exposures occurred at the times, places and in the manners alleged. This, however, is not sufficient to establish that appellant sustained an injury while in the performance of his federal duties. The evidence must establish that the events, incidents or exposures caused an injury.⁸

Appellant submitted no such evidence, and without it the record does not show that the Office's October 16, 1995 decision denying his claim was erroneous. The Board will affirm the Office's August 26, 1999 decision denying appellant's request for reconsideration.

The August 26 and June 21, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 13, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ 20 C.F.R. § 10.607.

⁸ When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury. *See generally John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993).